IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE N.V. RAMANA

WRIT PETITION NO.19478 of 2004

Between:

1 Javvadi Sree Ranga Nayakulu, S/o. Laxmayya Naidu,
D.No. 2-121, R/o. Penugonda, Penugonda Mandal,
West Godavari District.
2 Javvadi Vijaya Venkata Ram, S/o. Venkata Laxmi narasimha

Rao, D.No. 2-122, R/o. Penugonda, Penugonda Mandal,
West Godavari District.
3 Gajula Madhavi Durga Bhavani, W/o. Gajula Manikyala Rao,
D.NO. 1-1 and 4-15, R/o. Penugonda, Penugonda Mandal,
West Godavari District.
4 Kottani Naga Mani, W/o. Vishnu
D.No. 29-66/1, R/o. Penugonda, Penugonda Mandal,
West Godavari District.
5 Kottani Vishnu, S/o.Erukulu,
D.No. 29-66/1, R/o. Penugonda, Penugonda Mandal,
West Godavari District.
6 Konala Narendra Reddy, S/o. Markandaya Reddy
D.No.1-120, R/o. Penugonda, Penugonda Mandal,
West Godavari District.
7 Konala Hymavathi, W/o. Nrendrareddy,
D.No.1-120, R/o. Penugonda, Penugonda Mandal,
West Godavari District.
8 Nooli Veera Vankata Prabhakara Rao, S/o. Veerabhadra Rao
D.No.2-115/1, R/o. Penugonda, Penugonda Mandal,
West Godavari District.
9 Nooli Rangaiah, S/o. Satyanarayana Murthy,
D.No.1-84, D.No.3-8/1 &2 R/o. Penugonda, Penugonda Mandal,
West Godavari District.
10 Nooli Satyanarayana Murthy, S/o. Lakshmana Swamy,
D.No.1-48 & 3-9, R/o. Penugonda, Penugonda Mandal,
West Godavari District.

11 Nooli Lakshmana Swamy, S/o. Kanakarao,
D.No.1-90 R/o. Penugonda, Penugonda Mandal,
West Godavari District.

12 Grandhi Venkata Lakshmi Somaraju Mutyalu, W/o. Late

Anjaneyulu, D.No.1-64 & 65 R/o. Penugonda, Penugonda

Mandal, West Godavari District.

13 Atyam Vasu Deva Rao, S/o. kama Raju
D.No.31-44, R/o. Penugonda, Penugonda Mandal,
West Godavari District.

14 Shaik Ahmed Ali, S/o. Sheik Ibrahim
D.No.3-26, R/o. Penugonda, Penugonda Mandal,
West Godavari District.

15 Inkula Kasi Viswanadham Gupta, S/o. Sheik Ibrahim
D.No. 1-18, R/o. Penugonda, Penugonda Mandal,
West Godavari District.

16 Kotla Krishna Rao, S/o. Satyanarayana,
D.No.1-94, R/o. Penugonda, Penugonda Mandal,
West Godavari District.

17 Kotla Surya Rao, S/o. Satyanarayana,
D.No. 1-67, R/o. Penugonda, Penugonda Mandal,
West Godavari District.

18 Tamanapudi Chiranjeevi Reddy, S/o. China Venkata Reddy
D.No.1-51, R/o. Penugonda, Penugonda Mandal,
West Godavari District.

19 Tamanapudi Satyanarayana Reddy S/o. China venkatareddy,
D.No.1-51, R/o. Penugonda, Penugonda Mandal,
West Godavari District.

20 Beella Simhachalam, W/o. Appalaswamy,
D.No.2-66, R/o. Penugonda, Penugonda Mandal,
West Godavari District.

21 Beella Sitamahalakshmi, W/o. Apparao,
D.No.2-67, R/o. Penugonda, Penugonda Mandal,
West Godavari District.

22 Tamanampudi Venkata Reddy, S/o. Late Varahala Reddy,
D.No.1-107, R/o. Penugonda, Penugonda Mandal,
West Godavari District.

..... PETITIONERS

AND

1 The District Collector, West Godavari District, Eluru.
2 The Penugonda Gram Panchayath, Penugonda, Penugonda

Mandal, West Godavari District, rep. by its Secretary.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to Issue a writ of mandamus or any other appropriate writ, order or direction declaring the action of the respondents in contemplating to demolish the buildings of the petitioners pursuance to the notice issued in ROC.No.171/2004
dt. 16.10.2004 issued by the 2nd respondent without conducting any enquiry on the rejections dt. 18.10.2004 submitted by the petitioners irregular, violative of principles of natural justice and also the provisions of A.P. Panchayath Raj Act and the Rules framed there under and under Articles 14, 21 and 300 (A) any portions thereof without acquiring the same on payment of compensation.

Counsel for the Petitioners: MR.K.CHIDAMBARAM

Counsel for the Respondent No.1: GP FOR REVENUE

Counsel for the Respondent No.2: Mr.D. Srinivas, SC for Gram Panchayats

The Court, at the admission stage, made the following:

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THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 19478 of 2004

O r d e r:

By this writ petition, the petitioners seek to challenge the action of the respondents in contemplating to demolish their buildings without conducting any enquiry as per their explanations, dated 18-10-2004 submitted to the notices issued by the second respondent-Gram Panchayat, dated 16-10-2004, and without paying any compensation to them, as irregular and violative of principles of natural justice.

The petitioners state that they are owners of the buildings, which are situated within the jurisdiction of respondent No.2-Gram Panchayat. When the respondents attempted to demolish their buildings for the purpose of widening of roads in Penugonda village beyond 50 feet width without following due process of law, it is their case that they filed W.P. Nos. 16988, 16916, 16954, 16880, 17254, 16997 and 19169 of 2004, and that this Court directed the respondents to follow due procedure before removing any structure. Pursuant thereto, it is stated that the second respondent issued notices under Sections 121 and 268 of Andhra Pradesh Panchayat Raj Act, 1994 in Roc. No.171/2004, dated 16-10-2004 calling upon the

petitioners to submit their explanations within three days as to why action should not be taken on their buildings, which were constructed in violation of Rule 20(2) of the Andhra Pradesh Gram Panchayat Land Development (Layout and Building) Rules, 2002 framed as per G.O. Ms. No. 67 Panchayat Raj and Rural Development (Pts.IV) Department, dated 26-02-2002. Thereupon, the petitioners claim to have submitted explanations on 18-10-2004 stating that their houses were constructed 5 to 50 years ago as per the Building Rules, which existed then, in accordance with the plans sanctioned by the then competent authorities, and the present Rules framed in G.O. Ms. No. 67, dated 26-2-2002, having no retrospective effective, should not be made applicable to their buildings, and if their buildings are required for road widening purpose, compensation as contemplated under Section 59 of the Panchayat Raj Act and as per the provisions of Land Acquisition Act, should be paid to them, and accordingly requested respondent No.2-Gram Panchayat to enquire into the matter, and withdraw the notices issued by it. Their grievance is that without considering their explanations and without conducting any enquiry into the matter as sought for by them, and without paying any compensation, the respondents are contemplating to demolish their buildings, which is illegal and irregular. Hence, the writ petition.

Denying the allegations made in the affidavit filed in support of the writ petition, a counter-affidavit has been filed on behalf of the respondents. It is stated that as per G.O. Ms. No. 377 Panchayat Raj Department, dated 12-10-1973, while constructing the building, one is required to leave at least 1.25 metres of set back site, and after issuance of G.O. Ms. No.67, dated 26-02-2002, one is required to leave at least 1.50 meters of set back site. It is stated that the Gram Panchayat proposed to widen the road up to 34 feet width, and in the public meeting held on 10-9-2004, all the villagers gave their consent to demolish their parts of buildings, which are falling within the proposed 34 feet width road. In the process of widening of the road up to 34 feet as the existing electrical poles, are required to be shifted back, respondent No.2-Gram Panchayat has taken a decision to demolish the structures/buildings which are falling within the set back area, which was required to be left as per the above-mentioned G.Os. As the constructions/buildings of the petitioners are falling within the set back area, respondent No.2-Gram Panchayat has issued notices dated 16-10-2004 to the petitioners calling for their explanation as to why the structures/buildings falling within the set back area, should not be demolished/removed, and more so to prevent electrical accidents to the petitioners as well as the general public. Inasmuch as the petitioners gave consent for demolition of their structures falling within the 34 feet width road, no compensation need be paid to them. Thus, the respondents pray to dismiss the writ petition.

Heard the learned counsel for the petitioners, the learned Government Pleader for Revenue for respondent No.1-District Collector and the learned Standing Counsel for respondent No.2-Gram Panchayat.

The learned counsel for the petitioner submits that respondent No.2-Gram Panchayat at the instance of rival political parties, is seeking to demolish the houses of the petitioners. In fact, there is no necessity to widen the road, for the road is not a busy thoroughfare, and the present width of the road is very much sufficient for easy flow of traffic. He submitted that since the petitioners have on an earlier occasion

approached this Court, respondents are bent upon demolishing the houses of the petitioners.

The learned Government Pleader for Revenue appearing on behalf of respondent No.1 submitted that the demolition work is being undertaken in respect of all the houses/buildings which are coming within the set back area and not in respect of the petitioners' buildings alone, and therefore, the contention of the petitioners that at the instance of rival political parties and since they have on an earlier occasion approached this Court, the respondents are bent upon demolishing their houses alone cannot be sustained.

The learned Standing Counsel for respondent No.2-Gram Panchayat submitted that in the public meeting held on 10-09-2004, the villagers of Penugonda, including some of the petitioners, gave consent for widening of the road to 34 feet, and voluntarily agreed to give away the portion of the land falling within the 34 feet. As per G.O. Nos. 377, dated 12-10-1973 and G.O. Ms. No. 67, dated 26-02-2002, one is required to leave set back site of 1.25 and 1.50 metres respectively, and as a result of road widening, the electrical poles are required to be shifted, those constructions which are coming within the 1.25 and 1.50 metres of set back area, only are sought to be demolished, and accordingly notices were issued, and there is no force of any rival political party in their issuance.

The learned Standing Counsel for respondent No.2-Gram Panchayat produced the relevant record relating to the proposed road widening. As per G.O. Ms. No. 377, dated 12-10-1973 and G.O. Ms. No. 67, dated 26-2-2002, any person constructing a building, is required to leave set back area of 1.25 to 1.50 metres. Even if the contention of the petitioners that the provisions of G.O. Ms. No. 67, dated 26-2-2002, cannot be made applicable to their constructions, for they were made much before its issuance, is accepted, the fact remains that as per the provisions of G.O. Ms. No. 377, dated 12-10-1973, the constructions were required to be made leaving a set back area of 1.25 metres. Therefore, irrespective of whether G.O. Ms. No. 67, dated 26-2-2002, is applicable to the petitioners or not, a minimum of 1.25 metres of set back area is required to be left by the petitioners as per the provisions of G.O. Ms. No. 377, dated 12-10-1973. The petitioners except stating that they had constructed their houses 5 to 50 years ago, had not stated as to when exactly they constructed the houses.

Be that as it may, the difference, if any, in the set back area that is to be left in terms of both the G.Os. is only 0.25 metres. It is the case of respondent No.2-Gram Panchayat that they proposed to widen the existing road to 34 feet, and that all the villagers even agreed to surrender their land falling within the 34 feet road, and this is even evident from the minutes of the public meeting held on 10-09-2004, wherein all the villagers, including some of the petitioners consented to the road widening to the extent of 34 feet agreeing to surrender their land falling within the road widening programme, and petitioner Nos. 12 and 15 even agreed to withdraw the present writ petition by their statements dated

01-11-2004 and 24-10-2004. As according to Rule 20(2) of G.O. Ms. No. 67, dated 26-02-2002, a minimum of 1.50 metres of front set back area is required to be left, and in view of the road widening programme, the electrical poles running along side of the road, are required to be shifted back, respondent No.2-Gram Panchayat, had issued notices to persons whose constructions/buildings are coming within the set back area, so as to accommodate the electrical poles, for the safety of the owners of the buildings as well as the general public, and no exception can be taken thereto. Since the road widening programme has been taken in public interest, no political rivalry can be attributed to the action of respondent No.2-Gram Panchayat in seeking to demolish the structures/buildings that are falling within the front set back area, and that too for accommodating the electrical poles, and more so when it is stated by the learned Government Pleader for Revenue that the demolition work is being undertaken uniformly in respect of all the houses/builders which are falling within the set back area, and not in respect of the buildings of the petitioners alone.

In the above view of the matter, there is no merit in the writ petition, and the same is accordingly dismissed. This order, however, shall not come in the way of the petitioners claiming compensation, if any part of the land owned by them is acquired by the Gram Panchayat for widening the road, and in the event the Gram Panchayat does not pay the compensation, it is always open to the petitioner to approach the competent civil Court and claim compensation. No costs.

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N.V. RAMANA, J.

Date: 31st December, 2004.

KSR

To

1 The District Collector, West Godavari District, Eluru.
2 The Secretary, Penugonda Gram Panchayath, Penugonda,

Penugonda Mandal, West Godavari District.

3 Two CCS to GP for Revenue, High Court of AP, Hyderabad (OUT)

4 Two CD copies.